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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

**CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,**

Plaintiff,

v.

CHARLES V. KESTER, ET AL.,

Defendants,

**AND RELATED CROSS-CLAIMS,
COUNTERCLAIMS AND/OR THIRD-
PARTY ACTIONS.**

CIV-S-02-0018 GEB-GGH

**PLAINTIFF'S REQUEST FOR
DISMISSAL OF SECOND AND THIRD
CAUSES OF ACTION AND
[PROPOSED] ORDER**

Judge The Honorable Garland E.
 Burrell, Jr.

Trial Date: None
Action Filed: January 4, 2002

Plaintiff, California Department of Toxic Substances Control ("DTSC") hereby requests dismissal of the Second Cause of Action (for Injunctive Relief under California Health and Safety Code Section 25358.3) and the Third Cause of Action (Abatement of a Public Nuisance) in DTSC's Fourth Amended Complaint (Document 1145, filed 7/22/2010) ("Fourth Amended Complaint").

Pursuant to the April 2010 Consent Decree (see, Exhibit A to Declaration of Sandra Goldberg in Support of Plaintiff's Motion for Approval and Entry of Consent Decree, Document

1100, filed April 1, 2010), approved by the Court on April 28, 2010 (Document # 1120), DTSC has recovered funds that it will use to remediate the Brighton Oil Site (as defined in the Fourth Amended Complaint at paragraphs 4 and 5). Accordingly, DTSC will not seek relief from the remaining defendants under the Second and Third Causes of Action, which seek injunctive relief under state laws.

This dismissal has no effect on DTSC's First Cause of Action in the Fourth Amended Complaint which seeks recovery of past response costs and declaratory judgment on liability for future response costs under Sections 107 and 113(g)(2) of CERCLA, 42. U.S.C. §§ 9607 and 9613(g)(2). Further, this dismissal also has no effect on the Counterclaims filed by defendants John L. Sullivan Chevrolet, Inc. and Gordon Turner Motors seeking contribution and apportionment under Section 113 of CERCLA. (Answer and Counterclaim to Fourth Amended Complaint By Defendants John L. Sullivan Chevrolet, Inc. and Gordon Turner Motors, Documents ## 1163 and 1164, filed September 22, 2010).

Dated: October 5, 2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
MARGARITA PADILLA
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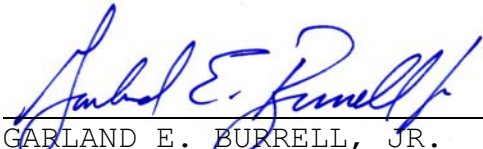
/s/ Sandra Goldberg, Esq.

SANDRA GOLDBERG
Deputy Attorney General
Attorneys for Plaintiff California
Department of Toxics Substance Control

Plaintiff's Second and Third Causes of Action in the Fourth Amended Complaint are hereby dismissed.

IT IS SO ORDERED.

10/5/10


GARLAND E. BURRELL, JR.
United States District Judge